

DEPARTMENT OF SOCIAL SERVICES

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November 25, 1986



ALL-COUNTY LETTER NO. 86-119

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY GAIN COORDINATORS

SUBJECT: CONTRACTING UNDER THE GREATER AVENUES FOR INDEPENDENCE PROGRAM (GAIN)

In response to a request by the GAIN Steering Committee of the California Welfare Directors Association, this letter will highlight the requirements for contracts under the GAIN program.

Generally speaking, contracting procedures are governed by state regulations found in MPP Section 10-203 as modified by All-County Letter No. 85-72, dated June 28, 1985, and federal regulations (45 CFR, Part 74, Subpart P (including appendix G)). Also, the GAIN regulations (Sections 42-740 through 42-742) address certain issues specifically related to contracts/agreements for GAIN job, training and education services.

As indicated in All-County Letter No. 85-72, CWDs are no longer required to submit contracts to State Department of Social Services (SDSS) for prior review. However, contracts and contracting practices are still subject to SDSS audit.

WHAT ACTIVITIES MAY AND MAY NOT BE CONTRACTED OUT

Counties may contract with other organizations or individuals for certain activities related to the administration of the GAIN program. For example, many counties have contracted for services such as the development of the county plan or for development of individual components of the plan like the labor market needs assessment.

CWDs which elect to involve other agencies in administering the GAIN program are reminded that the CWD remains responsible for ensuring that all contracting requirements are met and that the GAIN program is operated consistent with all statutory and regulatory requirements. In order to avoid a conflict of interest, CWDs may not allow another agency to administer GAIN Contractor selection activities if that agency will be competing to provide GAIN services.

Counties may also contract for certain direct services to GAIN participants such as job services, assessment, training/education services, and supportive services. As indicated in All-County Letter No. 86-82, dated August 26, 1986, counties may contract for the administration of the remedial education screening test. Also, counties may use contractors to act as substitute payees or to develop vendor payment plans under money management.

Due to constraints under federal and state law, counties may not contract out for the execution of the participant contract, the determination of eligibility, or actions related to the granting, termination, or modification of aid payments. Specific examples of activities that the county may not contract out include registration, determining deferral status, appraisal (except for the remedial education screening test), cause determinations, conciliation, and imposing money management or sanctions.

PERFORMANCE CRITERIA

The GAIN regulations (Section 42-740.1) provide that certain performance criteria must be contained in all job, training or education service contracts, including agreements with employers providing Preemployment Preparation (PREP). The regulations (Section 42-742) require additional performance criteria for contracts/agreements with employers or intermediary service providers when grant diversion is used as the funding mechanism for training services.

The performance criteria in Section 42-740.1 are designed to ensure that the contractor fulfills performance obligations specific to the contract, and to protect the CWD in the event the contractor does not perform. One of the specific performance criteria is that job placement activities must occur during the course of the contract. There has been some confusion as to what constitutes such placement activity for providers of education services. Examples of job placement activities in this case include referrals to Employment Development Department (EDD) job boards, placement centers and job opportunity bulletin boards.

Counties may augment the performance criteria included in the regulations with criteria specific to the contract/agreement.

PAYMENT FOR TRAINING AND EDUCATION SERVICES

The law (W&I Code Section 11320.3(k)) and GAIN regulations (Section 42-740.2) provide that any payment for education or training services using GAIN funds must be made in accordance with a competitively selected fixed unit price performance-based contract. (See the section of this letter on competitive selection for more information on this topic.) Payment to providers of training or education services are not subject to the GAIN payment requirements when grant diversion is used as the sole funding mechanism or when other "non-GAIN" funds such as JTPA or average daily attendance (ADA) funds are used.

The following summarizes the payment provisions for education services:

- o Full payment must be made to the provider when a participant successfully completes the education program (Section 42-740.211).
- o Pro rata payments must be paid to the provider if the participant does not complete the education program (Section 42-740.211(a)).

The following summarizes the payment provisions for training services:

- o Full payment must be made to the provider when the participant has successfully completed the training program, and has been placed and retained in unsubsidized employment for 180 days (six months) (Section 42-740.212).

The method by which full payment may be made is as follows:

- o Up to 70 percent of the cost for the training may be paid when the participant has successfully completed the training program and has been placed in unsubsidized employment (Section 42-740.212(a)).
- o The remaining percentage, but at least 30 percent of the cost, shall be held back for follow-up progress payments during the 180-day retention period at 30, 90 and 180 day intervals. The progress payments are made based upon evidence of participant job retention (Sections 42-740.212(a)(1) and 42-740.212(a)(1)(A)).
- o A pro rata share of the 70 percent fixed unit price payment shall be paid to the provider if the participant does not complete the training program as determined by the CWD, or attains unsubsidized employment prior to the conclusion of the training program (Section 42-740.212(b)). Contractors are also eligible to receive pro rata payments if a participant exercises his/her one-time right to request a change or reassignment within 30 days of the date the training began.
- o If the participant does not complete the training program, but obtains unsubsidized employment related to the training and remains employed for 180 days, providers shall be paid the difference between the pro rata payments made when the participant dropped out of training and 70 percent of the fixed unit price described above.

Pro rata payments should be based upon the amount of time the participant was actually in the program. The CWD is responsible for negotiating with the provider as to the exact circumstance for how and when pro rata payments would be made, and this should be specified in the contract.

COMPETITIVE SELECTION

All contracts for GAIN services must be competitively selected using applicable state and federal regulations as noted earlier in this letter. Federal regulations allow CWDs to contract with other public agencies such as school districts, public colleges and universities and other governmental agencies without competitive selection. This exemption applies to all contracts with public agencies including those for job, training and education services.

The competitive selection requirement for on-the-job training (when grant diversion is the only funding mechanism), supported work and transitional employment can be met by conducting an application and screening process which adequately assesses the potential providers' ability to succeed with GAIN participants. In addition, agreements with providers of PREP are not required to be competitively selected since there is no exchange of funds.

We understand and appreciate concerns expressed by CWDs regarding the contracting requirements for GAIN. We intend to monitor the area as GAIN is implemented throughout the state to determine areas that might require changes.

Please direct questions regarding Division 10 regulations, All-County Letter No. 85-72 or federal regulations to Dennis Gilliam, SDSS Contracts Bureau, at (916) 322-4801. Questions regarding the GAIN regulations may be directed to your program Operations Unit consultant at (916) 324-6962.

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cc: CWDA